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10/815,300	03/31/2004	Lance T. Funston	(192654)	7296

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EXAMINER	
MARANDI, JAMES R	
ART UNIT	PAPER NUMBER
2623	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/815,300	FUNSTON, LANCE T.	
	Examiner	Art Unit	
	JAMES R. MARANDI	2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *31 March 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-11* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-11* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *31 March 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-11 rejected under 35 U.S.C. 103 (a) as being unpatentable over applicant's own disclosures (background of the invention).

Regarding claim 1, applicant's admitted prior art discloses:

A method of calculating a local delivery of a local television commercial spot for a non local advertiser (Paragraphs [9] - [11] **comprising the steps of:**

determining an estimated audience delivery for the local spot (Paragraph [11]);

receiving and processing affidavits (Paragraph [9]), **in electronic format** (Paragraph [25], applicant's admission that "today, the vast majority of the affidavits are provided in electronic format"), **for each airing of the local spot, the affidavits**

comprising detailed information on the airing of the local spots including a date and time the local spot aired (Paragraph [9])**;**

obtaining national audience measurement data for each time interval during which the local spot aired(Paragraph [11], NTI data)**; and**

calculating an actual proportional delivery for the local spot by combining the audience measurement data for each airing of the local spot (Paragraph [11])**.**

Applicant's admitted prior art does not expressly show automating steps of claim 1.

It was known at the time of the invention that merely providing an automatic means to replace a manual activity which accomplishes the same result is not sufficient to distinguish over the prior art, *In re Venner*, 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA 1958). For example, simply automating the step of calculating the audience measurement data for each airing of the local spot based upon the information from the affidavits and NTI gives you just what you would expect from the manual step as shown. In other words there is no enhancement found in the claimed step. The claimed steps only provide automating the manual activity.

It would have been obvious to a person of ordinary skill in the art at the time of the invention to automate the scoring and iterating steps because this would speed up the process of calculating the audience measurement data, which is purely known, and an expected result from automation of what is known in the art.

Regarding claim 2, applicant's admitted prior art discloses:

A method of aggregating local spots on a network into national equivalent units (Paragraph [11]) **comprising the steps of:**

obtaining, in electronic format, details on the airing of the local spots (Paragraphs [9] and [25])**;**

obtaining national viewing data for the network (CMIT, weekly publication by Nielsen Media Research as cited in Paragraph [28])

determining an impression delivery for the local spots based on the national viewing data (Paragraph [11])**;**

assigning audience values for the local spots based on the impression delivery for the spots(Paragraph [11])**;**

aggregating the audience values to create a national equivalent unit on the network (Paragraph [11])**.**

Applicant's admitted prior art does not expressly show automating steps of claim 1.

It was known at the time of the invention that merely providing an automatic means to replace a manual activity which accomplishes the same result is not sufficient to distinguish over the prior art, *In re Venner*, 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA 1958). For example, simply automating the step of calculating the audience measurement data for each airing of the local spot based upon the information from the

affidavits , NTI, and CMIT gives you just what you would expect from the manual step as shown. In other words there is no enhancement found in the claimed step. The claimed steps only provide automating the manual activity.

It would have been obvious to a person of ordinary skill in the art at the time of the invention to automate the scoring and iterating steps because this would speed up the process of calculating the audience measurement data, which is purely known, and an expected result from automation of what is known in the art.

Regarding claim 3, applicant's admitted prior art discloses:

A method for aggregating local commercial spot inventory into national equivalent units for a network and providing accurate audience delivery measurements using published national viewing data comprising the steps of:

processing affidavits in an electronic format for every local spot aired, the affidavits comprising detailed information on the airing of the local spots(Paragraphs [9] and [25])**;**

determining an impression delivery for the local spots aired based on viewing data from a national audience measurement and matching the impression delivery with the information from the processed affidavits (Paragraph [8])**;**

assigning audience values for the local spots based on the impression delivery (Paragraph [11]);

aggregating the local spot affidavit information, impression delivery and audience values to generate a national equivalent unit (Paragraph [11]);

for the national equivalent unit determining the number of times the unit aired and an impression delivery for the unit (Paragraph [11]);

comparing the estimated delivery with the actual delivery to determine the value of the national equivalent unit (Paragraph [8]);

The following steps are iteration of the above steps:

for additional national equivalent units, repeating the steps of determining an impression delivery of the local spots, of assigning audience values for the local spots, and of determining the number of national equivalent units aired and the impression delivery for the national equivalent units; and

calculating from the national equivalent units the amount to charge an advertiser for an advertising schedule on the network.

Applicant's admitted prior art does not expressly show automating steps of claim 1.

It was known at the time of the invention that merely providing an automatic means to replace a manual activity which accomplishes the same result is not sufficient to distinguish over the prior art, *In re Venner*, 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA 1958). For example, simply automating the step of calculating the audience measurement data for each airing of the local spot based upon the information from the

affidavits , NTI, and CMIT gives you just what you would expect from the manual step as shown. In other words there is no enhancement found in the claimed step. The claimed steps only provide automating the manual activity.

It would have been obvious to a person of ordinary skill in the art at the time of the invention to automate the scoring and iterating steps because this would speed up the process of calculating the audience measurement data, which is purely known, and an expected result from automation of what is known in the art.

Regarding claim 4, applicant's prior art disclosure admits **wherein the affidavits comprise the exact date and time the local spot aired, the network on which the local spot aired, and the program during which the local spot aired** (Paragraph [9]).

Regarding claim 5, applicant's prior art disclosure admits **wherein the affidavits are received in electronic format** (Paragraph [25]).

Regarding claim 6, **wherein the electronic formats of the affidavits are converted into a readable format,** is merely an automation of a known process which would speed up an already expected result.

Regarding claim 7, applicant's prior art disclosure admits **wherein the affidavits are received in paper format** (Paragraph [9]).

Regarding claim 8, **wherein the paper affidavits are scanned or otherwise converted into a readable electronic format** is merely an automation of a known process which would speed up an already expected result**.**

Regarding claim 9, applicant's prior art disclosure admits **wherein the affidavits are received in both paper and electronic format** (Paragraphs [9] and [25])**.**

Claims 10 and 11 are rejected based on the same analysis as claim 3.

Prior art Made of Record

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- Thomas J. Whymark, "Multi-Market Broadcast Tracking, Management and Reporting Method and System", US Patent No. 7,039,931.

Contacts

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES R. MARANDI whose telephone number is (571)270-1843. The examiner can normally be reached on 8:00 AM- 5:00 PM M-F, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher C. Grant can be reached on (571) 272-7294. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/James R. Marandi/

/Christopher Grant/
Supervisory Patent Examiner, Art Unit 2623